IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 628 OF 2005

Mrs. Arundhati Gupta & Anr. ..Appellants.

Versus

Shri Tapesh Kumar Gupta & Ors. ..Respondents.

Shri V.B. Naik with Smt. S.M. Dandekar, for the Appellants.

Shri A.Y. Sakhare i/by Kishore Thakordas & Co. for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 13TH JUNE, 2005

P.C. :

1. Heard Advocate for the Appellants and Respondents.

2. The appellants have challenged the order granting probate of the will of deceased testator Tarun

Gupta, who was the husband of Appellant No.1 and brother of Respondent No.1. Appellant No.2 is the daughter of the Appellant No.1 from her earlier marriage. The will is challenged by the appellants firstly on the ground that though the will is allegedly executed on 3rd April, 1994, the deceased Tarun Gupta was in Delhi and from the record of his office produced by the appellants it no where revealed that on that date he travelled from Delhi to Pune for execution of the said will. The third circumstance urged by the learned counsel for the appellants is that in the will, the copy of which is annexed in this Appeal, there is a reference to the marriage of appellant No.2. According to the learned counsel for the appellants, appellant No.2 was not at all married on the date of the will and she was married on 8th October, 1994. Therefore, this reference of the marriage of appellant No.2 shows that it is a false and bogus one and he also contended that regarding the testator's marriage with appellant No.1, the date is wrongly mentioned. It should be 9.5.1983; whereas in the Appeal the date of marriage is 9.5.1982.

3. Counsel for the appellants also tried to contend that the will is unnatural because even though the appellant No.1 is the wife, there is no equally justifiable distribution of the property.

4. On the other hand the learned counsel for the

Respondents contended that there is absolutely no substance in any of the objections raised by the Appellants. Deceased Tarun Gupta was high salaried person, always travelling by plane. There is evidence of the attesting witness to show that the testator was in Pune on that date and contacted his doctor, namely, S.L. Kulkarni and went to other attesting witnesses who are Army Personnel and then the Will came to be executed. He also contended that thereafter, the record about the journey undertaken by the testator on the date of the will is produced by his office. It was his official visit at the cost of the company but that does not show that the testator could not have come to Pune privately without their being official record about the same. Secondly, about mentioning of the marriage of appellant No.2 in the will, counsel for the respondent, contended that prior to her marriage appellant No.2 was staying with her friend for three years and therefore, he was under the impression that she must have been married by that time.

5. Regarding distribution of property, giving share to the appellant No.1, respondents counsel pointed out that though the appellant No.1 had left the deceased and the deceased was deserted consistently without any notice, the testator had made arrangement for her by providing a flat at Calcutta. Therefore, according to him, there is absolutely no suspicious

circumstances surrounding the will and no case to admit the appeal.

6. Then as per the will the flat is given to the appellant No.1. It cannot be said that the deceased did not care for the welfare of the appellant No.1. In any case how much property is to be given to appellant is still discretion of the testator. The person raising claim over the property is not a stranger. He is brother of the deceased. Due execution and attestation of the will at Pune has been properly established. There is nothing suspicious in testator coming to Pune and have the execution of the will on that date without their being any official record. Regarding mentioning of the marriage of appellant No.2, the explanation that has been given is supported by the record. There is absolutely no suspicious circumstances surrounding the will. Appeal is dismissed. Prayer for status quo is rejected.

13.06.2005 (D.G. DESHPANDE,J.)

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